

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the 2011 Annual Hearing
on the Power Plant Siting and
Transmission Line Routing Program

REPORT TO THE COMMISSION

On December 2, 2011, the Minnesota Public Utilities Commission requested that the Office of Administrative Hearings conduct on its behalf the 2011 Annual Hearing on the Power Plant Siting Act Programs, held pursuant to Minn. Stat. § 216E.07 (2010).¹ Administrative Law Judge Eric L. Lipman conducted the public hearing at 1:00 p.m. on December 29, 2011, at the Saint Paul offices of the Minnesota Public Utilities Commission.

Following a 33-day public comment period, the hearing record closed at 4:30 p.m. on February 1, 2011.²

The Annual Hearing has two key purposes. It is intended to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. Additionally, the annual hearing affords interested persons an opportunity to be heard regarding the Commission's activities, duties or policies pursuant to the Power Plant Siting Act.³

Notice of the Annual Hearing

Minn. Stat. § 216E.07 requires that the Commission hold a public hearing each year so as to afford interested persons an opportunity to be heard on any matters relating to the siting of large electric generating power plants and routing of high-voltage transmission lines. The Commission must provide at least ten days, but no more than 45 days notice, of the annual meeting alongside a tentative agenda for the hearing. This notice must be mailed or served electronically to those persons who have requested notice and published in the *EQB Monitor* and the Commission's calendar.⁴

¹ Exhibit 1.

² *Public Hearing Transcript*, OAH Docket No. 8-2500-21746, at 9.

³ See Minnesota Statutes Chapter 216E; Minnesota Rules Chapter 7850.1000 to 7850.5600.

⁴ See Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

On December 15, 2011, the Commission served notice of the annual hearing, with a tentative agenda, to those persons who requested notice.⁵ The notice was published in the *EQB Monitor* on December 12, 2011 and was posted on the Commission's web calendar throughout notice and public comment periods.⁶

Twenty members of the public (not including staff of the Department of Commerce's Energy Facility Permitting Unit or the Commission) attended the hearing. Twelve of those persons gave testimony during the proceedings, as detailed below.

Introductions from Commission and OES Staff

Michael Kaluzniak of the Commission staff explained that the Power Plant Siting Act is administered jointly by the Commission and the Department of Commerce's Energy Facility Permitting Unit (EFP). Mr. Kaluzniak described the EFP's role in managing the development of siting and routing records, conducting environmental reviews, and making recommendations to the Commission. He likewise described the roles of the Commission and its staff.

Deborah Pile of the EFP described the work of the project managers who provide environmental reviews of proposed projects. Additionally, Ms. Pile detailed the unit's maintenance of lists of persons who desire to receive notices on permitting matters and the recent improvements that have been made to the notice process.⁷

Ms. Pile likewise summarized the unit's technical support roles at each of the stages of the permitting process, including: environmental review, public and contested case hearings, permit decision-making and compliance with permit terms.

Ms. Pile noted that, to further improve the unit's operations, the Department convened a set of inter-agency workgroups. These groups permit the staff of different agencies to work together on matters of mutual concern. In 2011, unit staff met with the Department of Transportation on matters relating to routing transmission lines along highways and the U.S. Fish and Wildlife Service on protections for avian wildlife.⁸

In 2011, EFP staff issued seven environmental review documents, two Environmental Impact Statements, two Environmental Assessments and three Environmental Reports. These materials related to eight transmission lines and five wind farms. Further, applications for five wind farms and thirteen transmission lines are currently under review.⁹

⁵ Ex. 1.

⁶ See, Ex. 2 and <http://www.puc.state.mn.us/puc/calendar/index.html?date=12/1/11>.

⁷ *Public Hearing Transcript*, at 18.

⁸ *Id.*, at 19.

⁹ Exs. 4, 5, 6 and 7; *Public Hearing Transcript*, at 21-22.

Summary of Public Hearing Testimony

A. *Remarks of Suzanne Rohlfig*

Ms. Rohlfig, a resident of Rochester, Minnesota, touched upon the Commission's efforts in 2011 to understand the environmental impacts of proposed projects. While generally complimentary of the Commission's work and inquiries, Ms. Rohlfig expressed concern that any efforts to streamline the permitting process not result in degradation of the environmental protections found in Minnesota law.¹⁰

B. *Remarks of Richard Busiahn*

Mr. Busiahn, a resident of Cannon Falls, Minnesota, expressed concern about the accuracy of routing maps in the proceedings on the CapX Hampton to Rochester transmission line. Additionally, Mr. Busiahn pointed to local objections to the applicant's preferred route as it passes through Cannon Falls, Minnesota.¹¹

C. *Remarks of Jamie Schrenzel*

Ms. Schrenzel, Principal Planner for the Minnesota Department of Natural Resources' Environmental Review Unit, was complimentary about the process improvements that occurred in 2011. She pointed to an increase in inter-agency coordination when undertaking environmental reviews and submitting comments; an increase in pre-application planning and coordination with applicants; and the establishment of a group of agency managers and staff – known as the Inter-agency Energy Work Group (IEWG) – that focuses on best practices and matters of common concern relating to utility siting.¹²

D. *Remarks of Frank Lorenz*

Mr. Lorenz, a resident of Edina, Minnesota, urged the Commission to make additional efforts to disseminate information about the costs of various energy alternatives. In Mr. Lorenz's estimation, the reporting in the news media on these subjects is often times incomplete and inaccurate. From this, Mr. Lorenz concludes that the public does not well appreciate the cost implications of obliging utilities to comply with strict environmental standards. To better inform the public, and the public's representatives in the legislature, Mr. Lorenz urges the Commission to disseminate more and better information on the cost-benefit trade-offs associated with different levels of environmental regulation. He predicts that the result of this effort will be a better-informed public and one that better appreciates the complexity of the matters that are presented to the Commission for resolution.¹³

¹⁰ *Id.*, at 25-28.

¹¹ *Id.*, at 28-29.

¹² *Id.*, at 30-34; *see also*, Ex. 9.

¹³ *Id.*, at 37-41 and 105-09.

E. *Remarks of Elizabeth Lafrenz*

Ms. Lafrenz, a resident of Plymouth, Minnesota, expressed concern over the health impacts to nearby homeowners when large electric facilities are located within 300 yards of residential neighborhoods. She pointed to three journal articles which suggested that those who lived within close proximity to high voltage transmission lines were at increased risk for later onset of serious health ailments. She likewise pointed to other sources which suggested that the routing of transmission lines can have significant and negative effects on the market values of nearby properties. Ms. Lafrenz urged the Commission to act so as to distribute the burdens and costs of transmission facilities more equitably across all of the ratepayers who benefit from the facilities and to avoid placing a disproportionate share of those burdens on to adjacent landowners.¹⁴

F. *Remarks of Krista Elfering*

Ms. Elfering, a resident of Freeport, Minnesota, shared two key concerns – that high voltage transmission wires are now permitted to be routed very close to residences (in her case, 185 feet from her home) and that homeowners are not given more advance notice before decisions occur in routing proceedings. She asserted that the short time-frames in routing proceedings unfairly disadvantage residents, like her, who oppose the preferred route proposed by the utility.¹⁵

G. *Remarks of Carol Overland*

Ms. Overland, an attorney at law, outlined a number of critiques of the Power Plant Siting Act program. In the main, she argues that the program is not well-structured to provide timely, accurate and complete information to members of the public and does a poor job in drawing comments from these interested stakeholders. In her view, these deficits combine to deprive the public of important information and lead the Commission into error.

Specifically, Ms. Overland asserted that: (1) with respect to the Hampton – LaCrosse portion of the CapX 2020 proceedings, viable river crossing alternatives were outlined by public commentators, although not thoroughly assessed by the EFP unit; (2) the public is significantly disadvantaged when route alternatives are presented late in the schedule of proceedings; (3) a Public Advocate is needed to help members of the public navigate the complex utility permitting process and play a meaningful role in public decision-making; (4) intervenor compensation is needed so as to allow stakeholders that are not agencies or corporations, challenge the claimed need for the proposed facilities and detail the impacts of siting those facilities; (5) the Department of Commerce's estimates of likely levels of electromagnetic field radiation (EMF) resulting

¹⁴ *Id.*, at 41-46.

¹⁵ *Id.*, at 46-48.

from transmission lines are significantly understated; and (6) there are insufficient regulations of small (less than 25 megawatt nameplate capacity) wind projects.

Lastly, Ms. Overland asserted that with increasingly long lag times between decision-making on the need for particular energy facilities, and the later routing determinations, assumptions that formed the basis for the certificate of need may have changed or have been disproven altogether. When this occurs, Ms. Overland argues that there are insufficient mechanisms for returning to the earlier determinations on facility need.¹⁶

H. *Remarks of Rob Undersander*

Mr. Undersander, a resident of St. Cloud, Minnesota, expressed concern that interested stakeholders other than the Applicant are not permitted to offer route alternatives in transmission line routing proceedings. He asserted that the Commission's rejection of a route alternative proposed by affected landowners in the CapX St. Cloud – Fargo proceedings, was error and followed from the Commission's failure to abide by its own rules. In Mr. Undersander's view, it is unfair and discriminatory to require affected landowners to unanimously agree upon route alternatives offered by a member of the public.¹⁷

I. *Remarks of Kate McBride*

Ms. McBride, a resident of Plymouth, Minnesota, expressed the concern that when making transmission line routing decisions, the Commission is not minimizing the impacts to the environment or to human settlements. She argues that these efforts are required by Minn. Stat. § 216E.03, subd. 7. She likewise expressed concern that when the goal of preventing the non-proliferation of utility lines conflicts with the requirement to avoid impacts to human settlements, the Commission prioritizes the first goal over the second. Lastly, Ms. McBride urged the Commission to improve the notices to landowners so as to detail how and when interested persons may offer route alternatives for consideration.¹⁸

J. *Remarks of Ilan Zeroni*

Mr. Zeroni, a resident of Plymouth, Minnesota, expressed the view that when a great deal of development has occurred around an existing transmission line corridor, the goal of avoiding impacts to human settlements should take precedence over the goal of minimizing the proliferation of new transmission line routes. He asserted that the impact to property values of upgrading a transmission line close to homesteads is greater than a fourteen percent reduction of value – a figure cited earlier in the hearing. Lastly, Mr. Zeroni argued that it was more equitable to have higher-cost route

¹⁶ *Id.*, at 53-61.

¹⁷ *Id.*, at 62-69.

¹⁸ *Id.*, at 70-75.

alternatives which avoided developed areas, and to pass the added costs of these alternatives on to all ratepayers, than imposing the burdens of these lines (in terms of lower property values) on to the few landowners closest to the transmission lines.¹⁹

K. *Remarks of Alan Muller*

Alan Muller, a long-time observer of Commission proceedings, asserted that the Commission proceedings are “biased in favor of the applicants” and that this bias undermines both the Commission’s decision-making and its credibility. He expressed dismay that Commission members who have participated in the deliberations of the Upper Midwest Transmission Development Initiative are not obliged to later recuse themselves from decision-making in particular transmission line matters. Mr. Mueller likewise asserted that the proceedings of the Department of Commerce and the Office of Administrative Hearings too frequently create “the appearance of public participation [rather] than the reality of it.” He argued that the economics of rate recovery do not encourage the use of the most accurate data on load growth or load decline. Moreover, he posited that because of Minnesota lies between energy sources in the Dakotas and energy demand areas on the East Coast, there are pressures for siting transmission lines in Minnesota that are not needed to serve local demands for energy. He concludes that the cost and health impacts associated with these lines are imposed upon Minnesotans without sufficient benefit to our state. Lastly, he urged the Commission to make transcripts of proceedings more widely available to the public, arguing that transcripts are necessary to understanding Commission proceedings.²⁰

L. *Remarks of Kristen Eide-Tollefson*

Ms. Eide-Tollefson, a resident of Frontenac, Minnesota, commended the Commission for establishing a lengthy public comment period in this proceeding and the broad public notice efforts that were undertaken to advise interested persons of the December 29 hearing. Yet, notwithstanding the breadth of the outreach, she expressed disappointment as to the amount of progress that had been made in addressing concerns that had been identified in earlier Annual Siting Program hearings. She urged the Commission to fashion specific recommendations for reform, or convene a working group to develop such proposals on its behalf, from the stakeholder comments received in this docket. Additionally, she asserted that the original Power Plant Siting Act authorized imposition of a per-kilowatt hour assessment that would be credited to the state’s general fund and used to underwrite utility-related research and environmental studies. Ms. Eide-Tollefson urged reconstituting this assessment to fund needed research. Lastly, she urged upgrades to the public advisor program so as to better educate the public on the resource planning and permitting processes in Minnesota.²¹

¹⁹ *Id.*, at 76-86 and 113-20.

²⁰ *Id.*, at 87-93.

²¹ *Id.*, at 94-104; *see also*, Ex. 8.

Summary of Written Public Comments

A total of 17 written comments were submitted into the record.

1. *Written Comments Touching Upon CapX 2020 Proceedings*

a. *Comments on the Hollydale Project (MPUC TL-11-152)*

Several residents of Plymouth, Minnesota, expressed concern over the health, economic and environmental impacts of routing transmission lines along the preferred route for the Hollydale project. Many asserted that they would have not purchased their homes had they known of the planned routing. These commentators urged either burying the proposed transmission line or re-routing it along Highways 55 and 494.²²

b. *Comments on the Hampton to LaCrosse Project (MPUC TL-09-1448)*

Several landowners in Southern Minnesota expressed concern over the health, economic and esthetic impacts of routing transmission lines along the preferred route in the CapX Hampton to LaCrosse project. Many asserted that they would have not purchased their homes had they known of the planned routing. These commentators urged re-routing the line away from impacted residences.²³

c. *Comments on the Brookings to Hampton Project (MPUC TL-08-1474)*

Randy Schroeder, a resident of Morgan, Minnesota, wrote to describe his experience as a landowner affected by the routing in the CapX Brookings to Hampton transmission line project. In Mr. Schroeder's view, the permitting process was unduly pressed to a conclusion by the Applicant and the Commission, without a thorough consideration as to whether route alternatives were in fact superior to the alignments that they were replacing. He likewise noted that the four minute presentations that opponents of the alternative routes were granted during a July 2010 Commission meeting were overly narrow to render comments on such an important decision.²⁴

Sara Folstad, Renville County Administrator, wrote to emphasize the importance of close coordination between construction teams and local engineers during the construction phase of utility projects. She asserted that this coordination is needed to avoid damage to local roadways and drainage tile systems.²⁵

²² *Comments of Tim and Jeanne Anderson, Laurie S. Azine, Sandy Honda, Tom Kubinski* (E-Docket 20121-70035-01) *Sean Davis and Chris Perine* (E-Docket 20123-72350-01).

²³ *Comments of Philip G. Perry* (E-Docket 20121-70035-01); *Comments of Steven W. Boss* (E-Docket 20123-72421-01).

²⁴ *Comments of Randy Schroeder* (E-Docket 20123-72350-01); see also, *Comments of Mark and Kathy Colbes* (E-Docket 20123-72421-01)

²⁵ *Comments of Sara Folstad* (E-Docket 20123-72421-01).

2. *Written Comments of Tim Mack*

Mr. Mack, a resident of Zumbrota, Minnesota wrote to urge the Commission to include “indemnify and defend” protections for landowners in any pipeline or transmission line routing permit. Such protections would indemnify landowners from liability for casualties that occur as a result of utility operations within rights-of-way.²⁶

3. *Written Comments of Kristen Eide-Tollefson*

Ms. Eide-Tollefson, a resident of Frontenac, Minnesota, made several recommendations for improving the public’s access to application-related information and its ability to affect the outcomes of the decision-making process. She urged: (1) expanding the role and duties of the Public Advisor; (2) improving the review and implementation of recommendations submitted during the Annual Siting Program hearing; and (3) enhancing the materials that are used to educate members of the public about the permitting process and Commission decision-making.²⁷

4. *Written Comments of Bruce and Marie McNamara*

Mr. and Mrs. McNamara, residents of Goodhue, Minnesota, expressed concern over the reviews undertaken by the Energy Facility Permitting staff. In the view of the McNamaras, the EFP presents “biased, incomplete and inconsistent information” during the unit’s public outreach efforts. The McNamaras’ written comments include specific recommendations for improving the quality of EFP presentations, the timeliness for disseminating information to the public and the accuracy of project-related detail. Lastly, the McNamaras urge the Commission to incorporate recent Heath Department data into revised setback standards for wind projects.²⁸

5. *Written Comments of Suzanne Rohlfing*

Ms. Rohlfing, a resident of Rochester, Minnesota, wrote to both praise the Commission’s and the Department’s recent efforts and to offer recommendations for additional improvements. She commended the establishment of the Interagency Energy Working Group, the role played by the Department of Natural Resources as a commentator in 2011 dockets and the increasing coordination between state and federal review processes. Ms. Rohlfing restated her earlier-expressed concern that efforts to streamline the permitting process not conflict with the long-range environmental stewardship objectives of Minn. Stat. § 116D.03 (2)(5).²⁹

²⁶ *Comments of Tim Mack* (E-Docket 20121-70035-01).

²⁷ *Comments of Kristen Eide-Tollefson* (E-Docket 20123-72350-01).

²⁸ *Comments of Bruce and Marie McNamara* (E-Docket 20123-72350-01).

²⁹ *Comments of Suzanne Rohlfing* (E-Docket 20123-72350-01).

6. *Written Comments of Joanie Florian*

Ms. Florian, mindful of the discussion regarding public access to transcripts of Commission proceedings, noted that these materials are available for public inspection, at no charge, at the Minnesota Department of Commerce. In her view, the requirement of Minn. Stat. § 216A.04 that court reporters be paid “a reasonable charge” for these transcripts, allows these materials to be developed and accessible.³⁰

7. *Written Comments of Carol Overland*

Following her remarks at the public hearing, Ms. Overland submitted critiques of the Power Plant Siting Act program and specific proposals for reform. In general, Ms. Overland expressed concern that without adequate technical resources, members of the public, state agencies and the Commission are poorly positioned to assess the routing and resource-planning proposals made by Minnesota’s utilities. To eliminate these disadvantages, she urged that: (1) broader and more inclusive interpretations be given to regulations governing the operation of Advisory Task Forces, notice requirements and the elements of environmental reviews; (2) a Public Advocate, as found in five other states, be established in Minnesota; (3) participation by the Residential Utilities Division in all dockets that “affect[] taxpayers;” (4) agency budgets for technical reviews be increased; (5) the range of possible route alternatives assessed as part of Environmental Reviews be expanded; (6) interested persons be permitted to challenge determinations of the size (nameplate capacity) of wind projects; and (7) broader access be granted to transcripts of Commission proceedings.

Additionally, Ms. Overland questioned the legal bases for excluding her (or her clients) from participation in Task Forces and proceedings that which she wished to join.

Lastly, as she did in February of 2011, Ms. Overland included a Petition for the Adoption of a Rule under Minn. Stat. § 14.09 and Minn. R. 1400.2500, with her comments. While there is doubt as to whether the inclusion of the “Petition” as a written comment in this docket satisfies the service requirements of Minn. R. 1400.2500, the writing does have the benefit of reflecting Ms. Overland’s proposals for reform. Her detailed rule revision is, therefore, commended to the Commission’s review.³¹

Dated: March 12, 2011

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)

³⁰ *Comments of Joanie Florian* (E-Docket 20123-72350-01).

³¹ *Comments of Carol Overland* (E-Docket 20121-70035-01).